

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHIQUITA BRANDS L.L.C.,)	Case No. 15 cv 05538
)	
PLAINTIFF,)	(Judge _____)
)	
v.)	
)	COMPLAINT FOR
ALFREDO LINARES, INC.,)	TRADEMARK INFRINGEMENT
)	AND UNFAIR COMPETITION
)	
DEFENDANT.)	
)	
)	JURY TRIAL DEMANDED
)	
)	

For its Complaint against Defendant Alfredo Linares, Inc. (“ALI”), Plaintiff Chiquita Brands L.L.C. (“Chiquita”) states as follows:

NATURE OF THE ACTION

1. This is a civil action for trademark infringement and unfair competition under federal, state and common law. Chiquita brings this action because Defendant ALI is doing business in the United States under a confusingly similar name and trademark in violation of Chiquita’s rights. Chiquita seeks to enjoin ALI’s acts, to recover damages and ALI’s profits, and to secure other relief, including attorneys’ fees and costs.

THE PARTIES

2. Plaintiff Chiquita is a Delaware limited liability company having a principal place of business at 550 South Caldwell Street, Charlotte, North Carolina 29202.

3. Defendant ALI is an Illinois company having a place of business at 3555 W 26th Street, Chicago, Illinois 60623.

JURISDICTION AND VENUE

4. This action arises under the federal Lanham Act, 15 U.S.C. §§ 1051, et seq., and under the related law of the State of Illinois.

5. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(b), and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Chiquita's state law claims because those claims are substantially related to Chiquita's federal Lanham Act claims.

6. This Court also has diversity jurisdiction under 28 U.S.C. § 1332 because Chiquita and Defendant are citizens of different states – namely, Delaware/North Carolina for Chiquita, and Illinois for ALI – and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

7. This Court has personal jurisdiction over Defendant ALI, and venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. §§ 1391(b) and (c). Defendant ALI is doing business in this District, and a substantial part of the events giving rise to Chiquita's claims occurred in this District.

GENERAL ALLEGATIONS

Chiquita and Its Brand


8. Chiquita is a global produce company that has offered a wide variety of fruits, vegetables and related goods and services to consumers under the CHIQUITA brand for 70 years.



9. The CHIQUITA trademarks are used in connection with almost every Chiquita product, including but not limited to banana puree, bananas, processed bananas, fruit juice, fresh



fruits, cookies, breakfast cereals, flavored drinking water, soft drinks, fruit drinks, fresh vegetables, processed fruits and vegetables, fruit smoothies, bread mixes, dipping sauces, dairy based dips and dried fruits. In addition to uses of the trademarks directly on its products and/or packaging, Chiquita's CHIQUITA marks are displayed on virtually all advertisements, brochures, flyers, web pages and other promotional materials distributed by Chiquita to promote its goods and services.




10. Chiquita also promotes its various goods and services under other CHIQUITA-formative trademarks, such as CHIQUITA MINIS, CHIQUITA MOM, CHIQUITA TROPICALS, CHIQUITA TO GO JR., CHIQUITA SMASHERS, CHIQUITA CHAMPIONS, CHIQUITA FRUIT BITES, CHIQUITA JUICE+FRUIT DUOS, CHIQUITA BANANA MATES, CHIQUITA EXPRESS and CHIQUITA. PERFECT FOR LIFE., creating a family of CHIQUITA-formative marks which allow consumers to identify Chiquita as the source of its goods and services. Consequently, consumers have come to recognize goods and services promoted under the CHIQUITA marks as emanating from Chiquita.

11. Chiquita has obtained the following trademark registrations for its CHIQUITA marks in the United States and all over the world. Copies of the TSDR printouts for the following United States federal registrations are attached as Exhibit A.



	Mark	Goods/Services	Status/Registration Date
1	CHIQUITA  Reg. No.: 3754058	fruit smoothies	Registered March 2, 2010
2	CHIQUITA and Design	bread mixes	Registered June 8, 2010

	Mark	Goods/Services	Status/Registration Date
	 Reg. No.: 3800981		
3	CHIQUITA CHIQUITA Reg. No.: 3801102	bread mixes	Registered June 8, 2010
4	CHIQUITA BANANA MATES CHIQUITA BANANA MATES Reg. No.: 3952040	dairy-based dips	Registered April 26, 2011
5	CHIQUITA CHIQUITA Reg. No.: 4019564	dried fruits	Registered August 30, 2011
6	CHIQUITA BANANA MATES CHIQUITA BANANA MATES Reg. No.: 4020159	dips	Registered August 30, 2011
7	CHIQUITA and Design 	smoothies	Registered October 11, 2011




	Mark	Goods/Services	Status/Registration Date
	Reg. No.: 4038961		
8	CHIQUITA SMASHERS CHIQUITA SMASHERS Reg. No.: 4050641	fruit-based snack food	Registered November 1, 2011
9	CHIQUITA and Design  Reg. No.: 4056724	cut fruits; cut vegetables	Registered November 15, 2011
10	CHIQUITA CHIQUITA Reg. No.: 4061399	dairy based dips	Registered November 22, 2011
11	CHIQUITA CHIQUITA Reg. No.: 4061398	dipping sauces	Registered November 22, 2011
12	CHIQUITA and Design  Reg. No.: 4064603	dipping sauces	Registered November 29, 2011
13	CHIQUITA and Design	dairy based dips	Registered November 29, 2011



	Mark	Goods/Services	Status/Registration Date
	 Reg. No.: 4064604		
14	CHIQUITA and Design  Reg. No.: 4084327	dried fruits	Registered January 10, 2012
15	CHIQUITA JUICE+FRUIT DUOS CHIQUITA JUICE+FRUIT DUOS Reg. No.: 4088487	processed fruits fruit juices	Registered January 17, 2012
16	CHIQUITA and Design  Reg. No.: 4112894	processed fruits	Registered March 13, 2012
17	CHIQUITA MINIS Reg. No.: 3096646	fresh fruits and vegetables	Registered May 23, 2006
18	CHIQUITA MINIS and Design	fresh fruits	Registered April 18, 2006


	Mark	Goods/Services	Status/Registration Date
	 <p>Reg. No.: 3082895</p>		
19	<p>CHIQUITA and Design</p>  <p>Reg. No.: 4206989</p>	fresh fruit and vegetables	Registered September 11, 2012
20	<p>CHIQUITA and Design</p>  <p>Reg. No.: 4210901</p>	fresh fruit and vegetables	Registered September 18, 2012
21	<p>CHIQUITA and Design</p>  <p>Reg. No.: 4210941</p>	preserved, dried and cooked fruit and vegetables	Registered September 18, 2012
22	<p>CHIQUITA and Design</p>	preserved, dried and cooked fruit and vegetables	Registered October 2, 2012

	Mark	Goods/Services	Status/Registration Date
	 Reg. No.: 4218758		
23	CHIQUITA and Design  Reg. No.: 4243576	fruit juices and fruit drinks	Registered November 13, 2012
24	CHIQUITA and Design  Reg. No.: 4273364	fruit juices and fruit drinks	Registered January 8, 2013
25	CHIQUITA MOM CHIQUITA MOM Reg. No.: 4270929	providing information in the field of recipes via the internet providing information in the field of nutrition via the internet	Registered January 8, 2013
26	CHIQUITA TO GO Chiquita To Go	fresh fruit	Registered April 10, 2007

	Mark	Goods/Services	Status/Registration Date
	Reg. No.: 3228690		
27	CHIQUITA FRUIT BITES  Reg. No.: 3211448	cut fruits	Registered February 20, 2007
28	CHIQUITA MINIS and Design  Reg. No.: 4358858	fresh fruits	Registered June 25, 2013
29	CHIQUITA TO GO JR. and Design  Reg. No.: 4393110	fresh bananas	Registered August 27, 2013
30	CHIQUITA TROPICALS  Reg. No.: 4491634	fruit juices and fruit drinks	Registered March 4, 2014
31	CHIQUITA MINIS and Design 	fresh fruits	Registered June 9, 2009

	Mark	Goods/Services	Status/Registration Date
	Reg. No.: 3635340		
32	CHIQUITA MINIS CHIQUITA MINIS Reg. No.: 3635341	fresh fruits	Registered June 9, 2009
33	CHIQUITA JR and Design  Reg. No.: 1741559	fresh fruits and vegetables; namely, bananas	Registered December 22, 2002
34	CHIQUITA JR. Reg. No.: 1797234	fresh fruit	Registered October 5, 2003
35	CHIQUITA and Design  Reg. No.: 765610	bananas	Registered February 25, 1964
36	CHIQUITA and Design  	cookies	Registered July 4, 1995

	Mark	Goods/Services	Status/Registration Date
	Reg. No.: 1903716		
37	CHIQUITA Reg. No.: 1906730	cookies and breakfast cereals	Registered July 18, 1995
38	CHIQUITA Reg. No.: 1991773	flavored drinking water; soft drinks; fruit juices; and fruit drinks	Registered August 6, 1996
39	CHIQUITA Reg. No.: 1442357	fresh pineapples	Registered June 9, 1987
40	CHIQUITA and Design  Reg. No.: 1445498	fruit juice	Registered June 30, 1987
41	CHIQUITA Reg. No.: 1446707	fruit juice	Registered July 7, 1987
42	CHIQUITA and Design  Reg. No.: 2090170	fruit juices and fruit drinks	Registered August 19, 1997
43	CHIQUITA Reg. No.: 1478925	fresh fruits	Registered March 1, 1988
44	CHIQUITA and Design	fresh fruits	Registered May 31, 1988

	Mark	Goods/Services	Status/Registration Date
	 Reg. No.: 1490411		
45	CHIQUITA Reg. No.: 670320	banana puree; mashed banana	Registered November 25, 1958
46	CHIQUITA Reg. No.: 2238638	fresh vegetables	Registered April 13, 1999
47	CHIQUITA and Design  Reg. No.: 2240561	fresh vegetables	Registered April 20, 1999
48	CHIQUITA Reg. No.: 2422224	processed fruits and vegetables	Registered January 16, 2001
49	CHIQUITA and Design  Reg. No.: 2424101	processed fruits and vegetables	Registered January 23, 2001

	Mark	Goods/Services	Status/Registration Date
50	CHIQUITA Reg. No.: 711622	bananas	Registered February 21, 1961
51	CHIQUITA and Design  Reg. No.: 1175379	processed bananas	Registered October 27, 1981
52	CHIQUITA Reg. No.: 1711944	processed bananas	Registered September 1, 1992
53	CHIQUITA and Design  Reg. No.: 1731439	fresh fruits	Registered November 10, 1992
54	CHIQUITA. PERFECT FOR LIFE. Reg. No.: 2820213	fresh fruit and vegetables	Registered March 2, 2004
55	CHIQUITA and Design  Reg. No.: 1731439	bananas	Registered August 11, 1964

	Mark	Goods/Services	Status/Registration Date
	Reg. No.: 775094		

12. The existence of these valid and subsisting federal trademark registrations constitutes *prima facie* evidence of the ownership and validity of the Chiquita marks.

13. Moreover, Registration Nos. 3096646, 3082895, 3228690, 3635340, 3635341, 1741559, 1797234, 765610, 1903716, 1906730, 19991773, 1442357, 1445498, 1446707, 2090170, 1478925, 1490411, 670320, 2238638, 2240561, 711622, 1175379, 1711944, 1731439 and 775094 are incontestable pursuant to 15 U.S.C. § 1065, which constitutes conclusive evidence of Chiquita's exclusive right to use its CHIQUITA marks for the products specified in those registrations pursuant to 15 U.S.C. §§ 1065 and 1115(b).

14. CHIQUITA is one of the most famous brands in the world. In 1944, Miss Chiquita was first drawn by artist Dik Browne, appearing as an animated banana and appearing on radio programs. Live models and personalities brought Miss Chiquita to life as early as 1944, and she evolved from an animated banana into being depicted as a human woman.

15. The famous Chiquita Banana jingle is one of the most successful commercial jingles of all time. It debuted in 1944, and at its peak was played 376 times per day on radio stations across the United States. The lyrics began as an explanation to an American audience about how to ripen and use bananas. Since, the lyrics have been updated to highlight the healthy nature of Chiquita's products – and to explicitly refer the customer to the CHIQUITA label – “look for Chiquita's label” – at the end.

16. Chiquita has invested in its brands over the decades through a great amount of advertising in all forms of media, including iconic TV and print ads. It has become one of the world's most popular brands.

17. Through its continuous use of the CHIQUITA brand for approximately 70 years, Chiquita has built up substantial goodwill in its CHIQUITA and CHIQUITA-formative marks, and the relevant consumers have come to recognize CHIQUITA as the source for high-quality food products.

ALI's Infringing Conduct

18. Defendant ALI owns several grocery stores in the Chicago-land area. In 2013, ALI changed the name of its stores to Chiquita Food Market.

19. Defendant ALI also uses the CHIQUITA mark on products and signs in its stores. On information and belief, ALI marks its store-brand meats and spices, among other things, with the infringing mark.

20. Chiquita wrote to the President of ALI in December 2014, notifying him of ALI's infringement of Chiquita's trademarks and the likelihood that customers would be confused, and asking for the infringement to stop immediately. On information and belief, despite that notice, ALI not only continued to use the name CHIQUITA FOOD MARKET, but also chose to expand to another store location in Bensenville, Illinois, willfully placing the CHIQUITA FOOD MARKET mark on the new store and its signs and products with full knowledge of the infringement and Chiquita's federal registrations.

21. Both Chiquita and ALI use their respective marks in connection with food products that are sold in a retail grocery environment. In fact, according to ALI's attorney, ALI has sold Chiquita's products branded legitimately with the CHIQUITA mark to its customers in

ALI's infringing stores along with ALI's infringing store-brand products. ALI operates retail grocery stores and sells ALI's own products in the retail grocery environment, and Chiquita sells its food products in the retail grocery environment. Chiquita's and ALI's customers are identical.

22. In all respects, Chiquita and ALI sell very similar goods and operate in the same channel of trade, and offer their goods and services to the same categories of consumers.

23. Defendant ALI's use of the CHIQUITA mark is identical in sound and connotation to Chiquita's registered CHIQUITA and CHIQUITA-formative marks.

24. Defendant ALI's use of the CHIQUITA mark is likely to cause confusion, mistake, and deception as to the source or origin of ALI's infringing goods and retail grocery stores on the one hand, and Chiquita's goods on the other, and is likely to falsely suggest a sponsorship, connection, affiliation, or association between ALI and/or its goods and retail grocery stores on the one hand and Chiquita's on the other, thereby injuring Chiquita and the public.

25. Defendant ALI's activities described above are without Chiquita's permission.

26. On information and belief, Defendant ALI's activities described above are willful.

27. Defendant ALI's activities described above have directly and proximately caused, and unless enjoined will continue to cause, irreparable harm both to Chiquita and to consumers, who have an interest in being free from confusion, mistake, and deception.

28. Chiquita has no adequate remedy at law and will be irreparably harmed if Defendant ALI is permitted to use the CHIQUITA mark in the United States in connection with selling groceries and food products.

COUNT ONE

**Federal Trademark Infringement Under
Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)**

29. Chiquita incorporates by reference each and every paragraph above as if re-stated herein.

30. Chiquita has invested significant effort and funds in marketing and promoting its products under the CHIQUITA mark and CHIQUITA-formative marks. As a result of substantial marketing and promotion for and the significant sales of the CHIQUITA products, consumers associate the famous CHIQUITA mark with a single producer or source in the United States.

31. Defendant ALI's infringing use of the CHIQUITA mark is confusingly similar to Chiquita's trademarks.

32. Defendant ALI's use of the mark in connection with the sale, offering for sale, distribution and advertising of groceries and food products is likely to cause confusion, or to cause mistake, or to deceive in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1).

33. Defendant ALI is misrepresenting and falsely describing to the general public the origin and source of its products sold under the infringing CHIQUITA mark in the United States, and creating a likelihood of confusion by purchasers as to the source and sponsorship of such products.

34. As a direct and proximate result of the foregoing acts of ALI, Chiquita has suffered and will continue to suffer monetary damages in an amount that will be established at trial.

35. Upon information and belief, Defendant ALI's acts were in conscious and willful disregard of Chiquita's rights, and the resulting damage to Chiquita is such as to warrant the trebling of damages in order to provide just compensation.

36. ALI's infringement described herein also irreparably harms Chiquita, and there is no adequate remedy at law. The balance of equities weighs in favor of an injunction.

COUNT TWO

Federal Trademark Infringement, False Designation of Origin, Passing Off, and Unfair Competition under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

37. Chiquita incorporates by reference each and every paragraph above as if re-stated herein.

38. By misappropriating, using and copying the CHIQUITA mark, Defendant ALI is misrepresenting and falsely describing to the general public and others the origin, sponsorship, or approval of its groceries and food products. Defendant ALI's use in commerce of the CHIQUITA mark in connection with its commercial activities is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of ALI with Chiquita, or as to the origin, sponsorship, or approval of ALI, its products, and its commercial activities, by or with Chiquita, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125 (a)(1)(A).

39. As a direct and proximate result of the foregoing acts of ALI, Chiquita has suffered and will continue to suffer monetary damages in an amount that will be established at trial.

40. Upon information and belief, Defendant ALI's acts were in conscious and willful disregard of Chiquita's rights, and the resulting damage to Chiquita is such as to warrant the trebling of damages in order to provide just compensation.

41. ALI's activities described herein irreparably harm Chiquita, and there is no adequate remedy at law. The balance of equities weighs in favor of an injunction.

COUNT THREE

(Trademark Dilution)

42. Chiquita incorporates by reference each and every paragraph above as if re-stated herein.

43. The CHIQUITA mark is famous.

44. ALI adopted its infringing CHIQUITA FOOD MARKET mark after the CHIQUITA mark became famous.

45. The use of ALI's infringing CHIQUITA FOOD MARKET mark causes dilution of the CHIQUITA mark.

46. ALI's use of its infringing CHIQUITA FOOD MARKET mark is commercial and in commerce.

47. ALI's dilution described herein irreparably harms Chiquita, and there is no adequate remedy at law. The balance of equities weighs in favor of an injunction.

COUNT FOUR

Violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510

48. Chiquita incorporates by reference each and every paragraph above as if re-stated herein.

49. Defendant ALI's use in commerce of the CHQUITA mark in connection with the sale, offering for sale, distribution and advertising of groceries and food products passes off

goods and services as those of another; causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods; causes likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another; and/or engages in other conduct that similarly creates a likelihood of confusion or misunderstanding. All such conduct is in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510.

50. As a direct and proximate result of the foregoing acts of Defendant ALI, Chiquita has suffered and will continue to suffer monetary damages in an amount that will be established at trial.

51. Upon information and belief, Defendant's acts were in conscious and willful disregard of Chiquita's rights.

52. ALI's activities described herein irreparably harm Chiquita, and there is no adequate remedy at law. The balance of equities weighs in favor of an injunction.

COUNT FIVE

Trademark Infringement and Unfair Competition Under Illinois Common Law

53. Chiquita incorporates by reference each and every paragraph above as if re-stated herein.

54. Defendant ALI's activities, described above, constitute common-law trademark infringement, misappropriation of the goodwill associated with Chiquita's CHIQUITA and CHIQUITA-formative marks, and constitute unfair competition in violation of Illinois common law.

55. Defendant ALI's use and threatened expansion of use in commerce of the CHIQUITA mark in connection with the sale, offering for sale, distribution and advertising of

groceries and food products is likely to cause confusion, or to cause mistake, or to deceive consumers and the general public, to the detriment of Chiquita.

56. ALI's activities described herein irreparably harm Chiquita, and there is no adequate remedy at law. The balance of equities weighs in favor of an injunction.

REQUEST FOR RELIEF

Wherefore, Chiquita respectfully requests that this Court enter judgment in its favor on each and every count set forth above and award it relief including, but not limited to, the following:

A. An Order holding that Defendant ALI's actions described above infringe Chiquita's CHIQUITA and CHIQUITA-formative marks, and that Defendant ALI's actions constitute trademark infringement, false designation of origin, passing off, and unfair competition under federal, state, and common law as detailed above;

B. An Order preliminarily and permanently enjoining ALI, its employees, agents, officers, directors, shareholders, subsidiaries, related companies, affiliates, distributors, dealers, and all persons in active concert or participation with any of them:

- i. From using the name CHIQUITA or any other trademarks, trade names, logos, and other names or identifiers that are the same as or confusingly similar to the CHIQUITA and CHIQUITA-formative marks, in any manner or form, in connection with any goods or services in the United States; and
- ii. From representing or suggesting, by any means whatsoever, directly or indirectly, that ALI, any goods or services offered by ALI, or any

activities undertaken by ALI, are sponsored or approved by, or are associated, affiliated, or connected with Chiquita in any way.

C. An Order requiring Defendant ALI to deliver up for destruction all advertisements, promotional materials, labels, signs, pictures, letterhead, plaques, and any other materials containing infringing marks and/or false claims in its possession, custody, or control, or in the possession, custody, or control of any of its agents or representatives that are in use in the United States or which are designed to be used in the United States;

D. An Order directing Defendant ALI to file with this Court and serve on Chiquita's attorneys, thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which it has complied with the Court's injunctions;

E. An Order requiring Defendant ALI to account for and pay to Chiquita any and all profits arising from or related to ALI's unlawful acts and that such profits be increased in accordance with 15 U.S.C § 1117 and other applicable laws;

F. An Order requiring Defendant ALI to pay Chiquita the full amount of damages caused by ALI's unlawful acts, and that such damages be trebled in accordance with 15 U.S.C. § 1117 and other applicable laws;

G. An Order requiring Defendant ALI to pay Chiquita its costs and attorneys' fees in this action pursuant to 15 U.S.C. § 1117 and other applicable laws; and

H. Any other relief as the Court may deem appropriate.

JURY DEMAND

Chiquita hereby demands a jury trial on all of its claims so triable.

Dated: June 22, 2015

Respectfully submitted,

/s/ David A. Golanty

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